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OFFICE OF PETITIONS

In re Application of :  
Geoffrey T. Haigh et al :  
Application No. 09/838,520 : DECISION GRANTING PETITION  
Filed: April 19, 2001 : UNDER 37 CFR 1.137(b)  
Attorney Docket No. A0312/7393 SJH :  
:

This is a decision on the petition under 37 CFR 1.137(b), filed May 10, 2004, to accept the unintentionally delayed payment of the issue fee in the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely pay the issue fee on or before March 23, 2004, as required by the Notice of Allowance and Fee(s) Due mailed December 23, 2004. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. See MPEP 711.03(c)(III)(A)(1). Therefore, the mere filing of a Request for Continued Examination (RCE) pursuant to the provisions of 37 CFR 1.114 herein is not a proper reply under 37 CFR 1.137(a)(1) or (b)(1). In view of the authorization contained in the RCE to charge any additional fees due, the \$1,330 issue fee will be charged to Deposit Account No.23-2825.

**Petitioner is advised that the issue fee paid on in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.<sup>1</sup>**

<sup>1</sup> The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that,

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Since the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3) and petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the issue fee; (2) the petition fee; and (3) an acceptable statement of unintentional delay have been received. Accordingly, the issue fee is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-8680.

This matter is being referred to Technology Center AU 2836 for processing of the concurrently filed RCE and Information Disclosure Statement.

*Frances Hicks*  
Frances Hicks  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).